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YEOH KENG HOCK

v.

PUBLIC PROSECUTOR

*b*HIGH COURT MALAYA, PENANG
GUNN CHIT TUAN J
[CRIMINAL APPEAL NO. 3 & 4 OF 1979]
11 MARCH 1981*c*

CRIMINAL PROCEDURE: Charge under s. 4(a) Prevention of Corruption Act 1961 - Acceptor a Police Inspector charged - Corruptly agreed to accept gratification - Inducement - To refrain from taking action against arrestee - Accomplice evidence - Corroboration - Convicting on uncorroborated evidence - Risk of - Unreliable witness - Material contradictions and inconsistencies - To view evidence with suspicion and to treat it with caution - Findings of fact - Not to be disturbed by Appellate Court unless satisfied conclusion of trial Court was plainly wrong.

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The appellant was tried and convicted in the Sessions Court, Penang for an offence under s. 4(a) of the Prevention of Corruption Act 1961.

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The learned President found, and it was not disputed by the respondent that there was no corroboration of the evidence of the main prosecution witness, the complainant, who had been arrested by the police for an alleged offence of rape. Nevertheless, the learned President found the appellant guilty of the said charge, and having warned himself, convicted him on the uncorroborated evidence of the complainant, an accomplice of notorious bad character.

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On appeal it was submitted by Counsel for the appellant that the learned President failed to observe the material contradictions and inconsistencies as disclosed in the evidence adduced by the prosecution; that if the learned President had considered the evidence of one Lim Beng Teik (PW7), which was rejected, he could not have found the complainant to be a reliable witness. Counsel also submitted that the learned President had failed to take a critical appreciation in his examination of the complainant's evidence and had not given his reasons for his belief or disbelief in this case where there was no evidence to corroborate that of the complainant.

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The learned deputy agreed that the main point in this case was whether the complainant was a reliable witness. He conceded that there were contradictions in the evidence of the complainant but submitted that they were minor and not material contradictions. He submitted that where the learned President had in mind the risk of convicting without corroboration but nevertheless decided to do so because he was convinced of the truth of the complainant's evidence, the conviction should not be quashed. He also submitted that contradictions and discrepancies in the evidence of a witness were not sufficient reason for rejecting the whole of the evidence of such witness but to treat it with caution.

*h***Held:**

[1] The learned President could have convicted the appellant provided that he had in mind the risk of convicting him without corroboration and was also convinced of the truth of the complainant's evidence.

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[2] In the face of the finding by the learned President on a question of fact an appellate Court would only be entitled to displace his conclusion if it was satisfied that his view was plainly wrong.

[3] Although the learned President had in mind in this case the need to scrutinize the evidence carefully he did not in fact make a critical examination of the complainant's evidence, thereby arriving at the wrong conclusion as to the credibility of the complainant.

[4] The complainant's evidence ought to be tested against the totality of his evidence as well as the evidence of other prosecution witnesses with suspicion and caution.

[Appeal allowed.]

Legislation referred to:

Prevention of Corruption Act 1961, s. 4(a)

For the appellant - Edgar Joseph Jr. & K. Kumaraendran

For the respondent - Abdul Khalid bin Abdul Manaff

(Digest Form Only)

Also found at [1981] CLJ 137

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